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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 475/2011

Decision adopted by the Committee at its fifty-second session (28 April–23 May 2014)

Submitted by:	Mumin Nasirov (represented by counsel, Irina Sokolova)
Alleged victim:	The complainant's brother, Sobir Nasirov
State party:	Kazakhstan
Date of complaint:	26 August 2011 (initial submission)
Date of decision:	14 May 2014
Subject matter:	Risk of extradition of the complainant's brother to Uzbekistan
Procedural issues:	Non-exhaustion of domestic remedies
Substantive issues:	Extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture
Articles of the Convention:	3, 6 and 7

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-second session)

concerning

Communication No. 475/2011

Submitted by:	Mumin Nasirov (represented by counsel, Irina Sokolova)
Alleged victim:	The complainant's brother, Sobir Nasirov
State party:	Kazakhstan
Date of complaint:	26 August 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 May 2014,

Having concluded its consideration of complaint No. 475/2011, submitted to the Committee against Torture by Mumin Nasirov on behalf of his brother, Sobir Nasirov, under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Mumin Nasirov, a national of Uzbekistan. He submits the communication on behalf of his brother, Sobir Nasirov, a national of Uzbekistan, born on 10 June 1972. At the time of submission, the complainant's brother was detained incommunicado in a pretrial detention centre of the Ministry of Internal Affairs in Uralsk, Kazakhstan, where he was awaiting extradition to Uzbekistan. The complainant alleges that extraditing his brother to Uzbekistan would violate his brother's rights under articles 3, 6 and 7 of the Convention against Torture. The complainant is represented by counsel, Irina Sokolova.

1.2 On 26 August 2011, in application of rule 114, paragraph 1, (former rule 108, paragraph 1) of its rules of procedure (CAT/C/3/Rev.5), the Committee requested the State party not to extradite the complainant's brother to Uzbekistan while the communication was being considered by the Committee.

The facts as presented by the complainant

2.1 The complainant submits that, on 24 July 2011, at around 3.30 p.m., his brother was arrested by representatives of the border police of the Republic of Kazakhstan while he was

crossing the border at Uralsk, Kazakhstan. The complainant alleges that the border police did not present any judicial warrant, nor did they explain the reasons for the arrest. The complainant's brother was taken to a pretrial detention centre of the Ministry of Internal Affairs in Uralsk.

2.2 The complainant submits that his brother is being held incommunicado, that he does not have access to a lawyer and that his correspondence is not being released from the pretrial detention centre.

2.3 On 27 July 2011, Uralsk City Court issued an order for the arrest for the detention for one month, pending extradition, of the complainant's brother. The complainant submits that, according to the Court's decision, his brother faces extradition to Uzbekistan on charges brought against him under the following articles of the Criminal Code of Uzbekistan: article 155 (terrorism); article 159 (attempts to overthrow the constitutional order); article 244, part 3 (illegal exit from or entry into Uzbekistan); article 248, paragraph 1 (illegal possession of arms, ammunition or explosive substances); article 244, paragraph 1 (production and dissemination of materials containing a threat to public security and public order); article 244, paragraph 2 (establishment, direction of or participation in religious extremist, separatist, fundamentalist or other banned organizations). The complainant submits that, while the charges were allegedly related to his brother's participation in the organization of the May 2005 Andijan events, a warrant for his arrest had already been issued by Uzbekistan in February 2003.

2.4 The complainant further submits that the passport number and the address of the residence indicated in the February 2003 arrest warrant did not correspond to his brother's personal data. The complainant maintains that before carrying out extradition, the State party must confirm that the person who is named in the arrest warrant is his brother.

2.5 The complainant submits that, in Uzbekistan, his brother used to work as a furniture maker, along with six other furniture makers. In May 2005, his brother decided to go to the Russian Federation to work there. After his brother's departure to the Russian Federation in May 2005, the other six furniture makers were arrested and charged with various crimes. The complainant alleges that they were tortured during the investigation and that the charges against them were fabricated. They were convicted on terrorism charges related to organizing and participating in the Andijan events.

2.6 The complainant submits that, after his brother's departure to the Russian Federation, their father was arrested and held in detention for several days. The complainant claims that, thereafter, police officers came to his parents' house on numerous occasions and interrogated all the members of the family, seeking information about his brother.

2.7 The complainant submits that his brother's extradition is scheduled for 27 August 2011.

The complaint

3.1 The complainant claims that his brother's extradition to Uzbekistan would constitute a violation by the State party of articles 3, paragraph 1, 6, and 7, paragraph 3, of the Convention.

3.2 The complainant submits that torture is systematic in Uzbekistan and that, in particular, suspected participants in the Andijan events are persecuted and subjected to mass arbitrary arrest and torture. He maintains that if his brother is extradited to Uzbekistan, the likelihood of him being tortured is very high. The complainant maintains that the other furniture makers who worked with his brother were tortured by law enforcement agents in Uzbekistan.

3.3 The complainant submits that his brother has applied for refugee status in Kazakhstan. The complainant maintains that there is very little chance that his brother will be granted refugee status.

State party's observations on admissibility

4.1 On 3 November 2011, the State party challenged the admissibility of the complaint. It submits that, on 27 August 2011, the Office of the Procurator-General of Uzbekistan sent a request for the extradition of the complainant's brother, who is accused of terrorism, interference with the constitutional order of Uzbekistan, illegal establishment of a religious organization, production and dissemination of materials containing a threat to public security and public order, and establishment and participation in religious extremist, separatist, fundamentalist or other banned organizations. According to the materials presented by the Uzbek authorities, he had participated in the illegal establishment of an extremist religious organization called Akromiilar, which aimed to change the constitutional order in the country, taking power or removing lawfully elected or appointed State officials. He was accused of having studied a textbook entitled *Yimonga Joul*, which contained so-called "dogmatic ideas", disseminating those ideas and recruiting members for the organization. He was also accused of conspiring with two other individuals, one of whom was later killed during a terrorist attack in Andijan which took place on 12 and 13 May 2005. He was further accused of founding a furniture producing enterprise in 1999, and a leather processing enterprise in 2004–05, 20 per cent of the profits from which were utilized to finance the illegal religious organization. The complainant's brother and others used the funds to purchase communication technology, transport and weapons which were later used to create disturbances in Andijan and to free arrested members of Akromiilar.

4.2 The State party further submits that, on 24 July 2011, the complainant's brother was arrested by the Kazakh authorities. His detention was authorized by Uralsk City Court on 26 July 2011. The same Court later extended the detention for three more months. On 22 August 2011, the complainant's brother's lawyer filed an application for refugee status in Kazakhstan on behalf of the complainant's brother. On 7 September 2011, the complainant's brother filed a request for political asylum with the Directorate of Migration Police, in response to which he "was given a clarifying answer". The State party submits that, if the complainant's brother's request for asylum is rejected, he has the right to appeal before a court in accordance with the Civil Procedure Code. Accordingly, the State party submits that the complainant has not exhausted all available domestic remedies and that the complaint should be declared inadmissible in accordance with article 5, paragraph 2, of the Optional Protocol to the CCPR.[1]

Complainant's comments on the State party's observations

5.1 On 6 January 2012, the complainant submitted that the State party had not submitted any information regarding the effectiveness of the refugee status determination procedure or of the appeals procedure in cases of denial of refugee status, in particular concerning individuals who were accused of terrorism in Uzbekistan and threatened with extradition. The complainant's brother had indeed applied for refugee status, but he did not believe that the application would have a positive outcome, since according to article 12, paragraph 5, of the Kazakh refugee law, persons who are accused of terrorism or participation in illegal religious organizations cannot be granted refugee status. Moreover, the official position of the Government of Kazakhstan regarding the Andijan events is the same as that of the

[1] The State party appears to confuse the communication procedures before the Committee against Torture and the Human Rights Committee.

Uzbek authorities. He submits that applications for refugee status from Uzbek nationals are systematically rejected and that out, of 30 such persons detained in Kazakhstan, 29 were denied refugee status and were extradited on a request from Uzbekistan. The complainant submits that his brother will attempt to appeal the decision if denied refugee status, but that they does not believe that the appeal will succeed, since the Kazakh courts as a rule agree with the position of the Office of the Procurator-General and deny appeals in such cases.

5.2 The complainant urges the Committee to reiterate its request for interim measures to the State party. He points out that, despite the fact that his brother is entitled to file an appeal in the case of denial of refugee status, his brother is kept in detention, the appeal deadlines are very short, he has limited possibilities of filing an appeal, which he is obliged to do through the detention centre administration and he is afraid that he would be extradited immediately. The complainant also submits that, according to non-governmental organization sources, the Kazakh special services illegally handed over at least nine persons to Uzbekistan between May 2005 and August 2007.

State party's additional observations

6.1 On 25 February 2012, the State party reiterated its submission regarding the charges brought by Uzbekistan against the complainant's brother. It submits that, after the Andijan events, the complainant's brother moved to the Russian Federation and that he was arrested on 24 July 2011 by the Kazakhstan border police and national security officers, as an international search warrant had been issued for him. The State party also submits that in Kazakhstan, ratified international treaties have priority over domestic legislation. Article 60 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters requires States parties, on receipt of a request for extradition, to take immediate steps to find and detain the person whose extradition is sought, except when the extradition cannot be made.[2] When a country issues a motion for an extradition, the person whose extradition is requested may be taken into custody before the formal extradition request is received. The motion must contain a reference to the detention order or the valid verdict, and an indication that the request for extradition will be presented later.[3] A person may be detained without such a motion if there are legal grounds to suspect that he or she has committed an extraditable offence in the territory of the other contracting party.[4]

6.2 The State party maintains that the complainant's brother was arrested lawfully, since, on 24 June 2011, the National Security Committee of the West Kazakhstan District received the ruling of the Office of the Procurator-General of Uzbekistan initiating an investigation against him on terrorism charges, dated 20 February 2006. The State party further submit that the complainant's brother's arrest was carried out in accordance with article 9 of the International Covenant on Civil and Political Rights and the domestic criminal procedure. On 26 July 2011, the Office of the Procurator-General requested approval from Uralsk City Court for the detention pending extradition of the complainant's brother. The Court, after holding an open hearing in the presence of the complainant's brother and the brother's lawyer, approved the request until 24 August 2011. On 27 August 2011, the Office of the Procurator-General of Kazakhstan received the extradition request from the Office of the Procurator-General of Uzbekistan. On 24 August 2011 and 23 September 2011, Uralsk City Court extended the detention of the complainant's brother until 24 September 2011 and 24 October 2011 respectively. The Court noted that no decision to extradite the complainant's brother had been taken by the Office of the

[2] The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters was ratified by the State party on 31 March 1993.

[3] Ibid., art. 61, para. 1.

[4] Ibid., art. 61, para. 2.

Procurator-General of Kazakhstan. On 21 October 2011 and 21 December 2011, the Uralsk City Court extended the detention pending extradition until 24 December 2011 and 24 March 2012 respectively. The above extensions of the detention pending extradition were motivated by the Committee's request for interim measures. According to domestic legislation, detention pending extradition may be extended up to 12 months at the request of the Procurator.[5]

6.3 On 22 August 2011, the complainant's brother's lawyer filed a request for refugee status on his behalf. On 12 October 2011, the authorities received a request for the discontinuance of the refugee status procedure from the complainant's brother. On 10 December 2011, the Department of Internal Affairs of West Kazakhstan District received a second request for refugee status from the complainant's brother. On 30 December 2011, his request was rejected by the Commission on the implementation of the procedure for granting, extending, withdrawing and terminating refugee status of the Directorate of Migration Police of the Department of Internal Affairs of West Kazakhstan District, based on article 12, paragraphs 4 and 5, of the refugee law adopted on 4 December 2009. Those provisions allow for the rejection of applications for refugee status from individuals who arrived from the territory of a safe third State and from individuals regarding whom there are serious grounds to assume that they have participated in the activities of terrorist, extremist or banned religious organizations in the country of arrival or in the country of origin. The complainant's brother has the opportunity to appeal the rejection in accordance with article 8, paragraphs 1.4 and 1.5, and article 15 of the refugee law and article 280 of the Civil Procedure Code of Kazakhstan. The appeal has to be filed before the court within three months from the initial decision. The complainant's brother's lawyer filed an appeal on his behalf, on 15 February 2012, before Court No. 2 of Uralsk City. At the time of the State party's submission, the appeal was under consideration. Accordingly, no final decision regarding extradition to Uzbekistan had been taken.

6.4 The State party submits that the complainant's brother failed to exhaust the available legal remedies and therefore his communication is inadmissible.

Complainant's additional submissions

7.1 On 11 March 2012, the complainant submitted that, on 27 December 2011, his brother's application for refugee status was rejected by the Commission on the implementation of the procedure for granting, extending, withdrawing and terminating refugee status of the Directorate of Migration Police of the Department of Internal Affairs of West Kazakhstan District and that he appealed the rejection before Court No. 2 of Uralsk City on 15 February 2012.

7.2 On 23 April 2012, the complainant submitted that, on 27 March 2012, Court No. 2 of Uralsk City rejected his brother's appeal based on article 12, paragraphs 4 and 5, of the refugee law (see para. 6.3 above), and because the Court considered that his brother did not "correspond to the definition of a refugee", since he had left Uzbekistan for the Russian Federation for economic reasons. On 13 April 2012, the complainant's brother filed an appeal against that court decision before the Appellate Panel of West Kazakhstan Regional Court. At the time of the submission of 23 April 2012, no court hearing had been scheduled.

7.3 The complainant submits that the State party has not presented information regarding the effectiveness of the refugee procedure for individuals seeking asylum from persecution by the law enforcement authorities of Uzbekistan. His brother's lawyer

[5] The State party makes reference to art. 534, para. 1, of the Criminal Procedure Code of Kazakhstan.

requested information from the Ministry of Internal Affairs and the Office of the Procurator-General regarding the number of persons seeking asylum in Kazakhstan who claim persecution by the authorities of Uzbekistan, how many of them have been granted refugee status and how many of them have been handed over to Uzbekistan. The Office of the Procurator-General responded that the lawyer was not authorized to request that information. The Ministry did not respond.

7.4 The complainant reiterates that his brother's appeals are likely to fail, since the State party's legislation does not provide for refugee status to be granted to individuals whose extradition is sought on charges of terrorism, religious extremism and participation in illegal religious organizations. He maintains that that applies in particular to individuals accused of participating in the Andijan events, since the official position of the Kazakh authorities is identical to that of Uzbekistan. The mere submission of an extradition request by Uzbekistan for such an individual is considered by the State party's Migration Police to constitute a "reasonable ground" to apply article 12, paragraph 5, of the refugee law. The courts consider that the approach of the Migration Police is lawful regarding individuals sought for participation in the Andijan events. The complainant maintains that the practice was confirmed in his brother's case. His brother's refugee status application was rejected based on the existence of an extradition request and the question of whether he risks being subjected to torture was not reviewed on its merits at all. The court also declined to review the issue, despite the lawyer's arguments that his client is under threat of being subjected to torture on return to Uzbekistan. The complainant maintains that further appeals have no prospect of success and that the refugee status determination procedure does not therefore constitute an effective domestic remedy in his brother's case.

7.5 On the merits of his brother's case, the complainant refers to the Committee's jurisprudence that it must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of extradition, and maintains, on the basis of numerous reports, that the practice of such violations is systematic in Uzbekistan.[6]

7.6 The complainant reiterates that his brother's extradition is sought in relation to terrorism charges and alleged participation in the Andijan events (see para 2.3 above) and that his brother's former co-workers, who have already been convicted on the same charges, were subjected to torture in order to extract their confessions. He maintains that, according to Amnesty International, individuals such as his brother are at a heightened risk of being ill-treated and that the Special Rapporteur on the question of torture has requested countries to refrain from handing over individuals accused of participating in the Andijan events to the Uzbek authorities. He submits that, since Uzbekistan had already issued an arrest warrant and an order for his brother's detention on remand, it is highly likely that his brother would be immediately arrested and held incommunicado after his extradition,

[6] The complainant refers to the report of the Special Rapporteur on the question of torture, Theo Van Boven (E/CN.4/2003/68/Add.2), paras. 66 and 67; Amnesty International, "Uzbekistan: lifting the siege on the truth about Andizhan", 20 Sept. 2005; Amnesty International, "Uzbekistan: impunity must not prevail", 10 May 2006; *Amnesty International Report 2011: The State of the World's Human Rights*; report of the Mission to Kyrgyzstan by the Office of the United Nations High Commissioner for Human Rights concerning the events in Andijan, Uzbekistan, 13–14 May 2005 (E/CN.4/2006/119), paras. 42 and 55; report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, on follow-up to the recommendations made by the Special Rapporteur (E/CN.4/2006/6/Add.2); report of the Secretary-General on the situation of human rights in Uzbekistan (A/61/526), paras. 18–21 and 48; and Human Rights Watch, *"No One Left to Witness": Torture, the Failure of Habeas Corpus, and the Silencing of Lawyers in Uzbekistan*, 13 December 2011.

which would aggravate the risk of being subjected to torture. Furthermore, the decisions of the Kazakhstan courts on extending his brother's detention pending extradition contain references to the fact that he had submitted a complaint to the Human Rights Committee[7] and that he had applied for refugee status. If the extradition takes place, the court decisions will be transmitted to the authorities in Uzbekistan in order for the duration of the detention in Kazakhstan to be subtracted from the final sentence. In Uzbekistan, the very fact that an individual has submitted a communication to a United Nations body or applied for refugee status is considered slander against the constitutional order, which is a crime. The complainant also makes reference to the jurisprudence of the European Court of Human Rights, which has found violations of article 3 of the European Convention on Human Rights in similar cases.[8] He concludes that in the present case, his brother is facing a foreseeable, real and personal risk of torture in the event of his extradition to Uzbekistan.

7.7 The complainant further submits that the Office of the Procurator-General appears to be awaiting the negative decision of the appeals court in response to his brother's application for refugee status in order to issue an order for his deportation. The complainant maintains that his brother will appeal the decision of the Procurator-General to grant the extradition request, but that the appeal has no chance of succeeding, since the Office of the Procurator-General systematically denies that the Uzbek law enforcement agencies use torture and justifies extraditions with the provision of so-called guarantees issued by the Uzbek authorities. Moreover, the courts agree with the position of the Office of the Procurator-General and request that complainants provide official documents confirming that they have been subjected to torture and/or will be subjected to torture in the event of extradition. Obviously, the extradited individuals are not in a position to provide such documents.

7.8 The complainant submits that he is under imminent threat of extradition[9] and urges the Committee to reiterate its request for interim measures.

State party's further observations

8. On 25 April 2012, the State party reiterated its previous submission (see paras 6.1–6.4 above).

Complainant's further submissions

9.1 On 18 June 2012, the complainant submitted that, on 7 May 2012, the West Kazakhstan Regional Court rejected his brother's appeal against the 23 April 2012 decision of Court No. 2 of Uralsk City denying him refugee status. The second instance court ruled that the complainant's brother's arguments that in Uzbekistan there was a consistent pattern of gross, flagrant or mass violations of human rights and that the plaintiff might become a victim of torture, inhuman treatment or punishment could not be taken into consideration since there was no concrete evidence that he might be subjected to torture and inhuman treatment in his country. Further, the Court stated that the decision of the Commission on the implementation of the procedure for granting, extending, withdrawing and terminating

[7] The State party's courts indeed mistakenly refer to a communication before the Human Rights Committee.

[8] The complainant refers to the jurisprudence of the European Court of Human Rights in the following cases: *Ismoilov and others v. Russia*, Application No. 2947/06, Judgment of 24 April 2008; *Elmuratov v. Russia*, Application No. 66317/09, Judgment of 3 March 2011; and *Sultanov v. Russia*, Application No. 15303/09, Judgment of 4 November 2010.

[9] The complainant refers to a report by Human Rights Centre "Memorial", entitled "Refugees from Uzbekistan in the CIS countries: the threat of extradition (May 2005–August 2007)".

refugee status of the Directorate of Migration Police of the Department of Internal Affairs of West Kazakhstan District to deny refugee status to the complainant's brother was not mandatory for implementation, that the final decision would be taken by the migration authority and, accordingly, that the appeal was premature.

9.2 The complainant further submits that, on 11 May 2012, the Directorate of Migration Police of the Department of Internal Affairs of West Kazakhstan District adopted decision No. 1 refusing to grant refugee status to his brother on the same grounds as the Commission.

9.3 On 17 May 2012, the complainant's brother appealed the 27 March 2012 decision of Court No. 2 of Uralsk City and the 7 May 2012 decision of the West Kazakhstan Regional Court. On 31 May 2012, the Cassation Panel of the West Kazakhstan Regional Court rejected the appeal, stating again that the decision of the Commission on the implementation of the procedure for granting, extending, withdrawing and terminating refugee status of the Directorate of Migration Police of the Department of Internal Affairs of West Kazakhstan District to deny refugee status to the complainant's brother was not "mandatory for implementation" and that the decision of the Directorate of Migration Police of the Department of Internal Affairs had not been appealed separately. At the time of the submission, the complainant's brother's lawyers were preparing an appeal against the 11 May 2012 decision of the Directorate of Migration Police of the Department of Internal Affairs.

9.4 The complainant reiterates that the above appeals have no prospect of succeeding, because the Migration Police decision is based on the provisions of article 12, paragraphs 4 and 5, of the refugee law and the courts have already reviewed and considered those grounds when reviewing the decision of the Commission (see para 7.4 above). The complainant further alleges irregularities in the State party's implementation of the domestic refugee status determination procedure.

9.5 Regarding the merits of the communication, the complainant reiterates that his brother's extradition to Uzbekistan would lead to a violation by the State party of his brother's rights under article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

10.2 The Committee notes the complainant's allegations that his brother's rights under articles 6 and 7 of the Convention have been violated, but observes that he does not provide any elaboration or substantiation of those allegations. Accordingly, the Committee finds, in accordance with article 22 of the Convention and rule 113 (b) of its rules of procedure, that the above allegations have not been sufficiently substantiated for the purposes of admissibility.

10.3 With regard to the complainant's allegation that his brother's extradition to Uzbekistan would violate his rights under article 3 of the Convention, the Committee considers that the communication has been substantiated for the purposes of admissibility, as the complainant has sufficiently elaborated the facts and the basis of the claim for a decision by the Committee.

10.4 The Committee takes note of the State party's submission that the complainant's brother has failed to exhaust the available legal remedies in that, at the time of the submission, the appeals proceedings against the decision of the Migration Police to deny him refugee status had not been finalized, and that his communication was therefore inadmissible. The Committee, however, observes that the State party's domestic law regulating the refugee status determination procedure allows the authorities to refuse refugee protection to an individual who arrived from the territory of a safe third State and to an individual regarding whom there are serious grounds to assume that he or she has participated in the activities of terrorist, extremist or banned religious organizations in the country of arrival or in the country of origin of the individual. The Committee recalls that article 3 of the Convention affords absolute protection against torture to anyone in the territory of a State party, regardless of the person's character or the danger the person may pose to society.[10] The Committee observes that the domestic refugee status determination procedure provides no such protection. Given those circumstances, the Committee concludes that the appeals against the refusal to grant refugee status before the State party's courts do not constitute an effective remedy with regard to evaluation of the risk for the complainant's brother of being subjected to torture on extradition. Consequently, the Committee considers that it is not precluded by article 22, paragraph 5 (b), of the Convention from examining the communication and proceeds to its examination on the merits.

Consideration of the merits

11.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

11.2 The issue before the Committee is whether the extradition of the complainant's brother to Uzbekistan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

11.3 The Committee must evaluate whether there are substantial grounds for believing that the complainant's brother would be personally in danger of being subjected to torture on return to Uzbekistan. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such a determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not of itself constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

11.4 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, which states that "the risk of torture must be assessed on

[10] See the Committee's jurisprudence in communications No. 297/2006, *Sogi v. Canada*, decision adopted on 16 November 2007, para. 10.2 and No. 300/2006, *Tebourski v. France*, decision adopted on 1 May 2007, para. 8.2.

grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable … The author must establish that … such danger is personal and present".[11] In that regard, in previous decisions the Committee has determined that the risk of torture must be foreseeable, real and personal.

11.5 With regard to the existence of a consistent pattern of gross, flagrant or mass human rights violations, the Committee recalls its concluding observations on the fourth periodic report of Uzbekistan, in which it expressed its concern about numerous, ongoing and consistent allegations that torture and ill-treatment were routinely used by law enforcement and investigative officials, or at their instigation or with their consent, and that persons deprived of their liberty were subjected to torture or ill-treatment for the purpose of compelling a forced confession and that such confessions were subsequently admitted as evidence in court in the absence of a thorough investigation into the torture allegations (CAT/C/UZB/CO/4, paras. 7 and 16).

11.6 The Committee notes that the complainant's brother's extradition is sought pursuant to a request from Uzbekistan accusing him of serious crimes, including terrorism, religious extremism, attempts to overthrow the constitutional order and, in particular, participation in the Andijan events. The Committee reiterates its concern, expressed in its concluding observations following its consideration of the second periodic report of Kazakhstan, about forcible returns to Uzbekistan in the name of the fight against terrorism, and the unknown conditions, treatment and whereabouts of persons returned following their arrival (CAT/C/KAZ/CO/2, para. 15). It also reiterates that the non-refoulement principle in article 3 of the Convention is absolute and the fight against terrorism does not absolve the State party from honouring its obligation to refrain from expelling or returning ("refouler") an individual to another State, where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.[12] In that context, the Committee also observes that the non-refoulement principle in article 3 of the Convention is absolute even if, after an evaluation under the 1951 Convention relating to the Status of Refugees, a refugee is excluded under article 1 F (c) of the latter Convention.[13]

11.7 In the circumstances of the present case, the Committee considers that the information before it sufficiently establishes a pattern of gross, flagrant or mass violations of human rights and the significant risk of torture or other cruel, inhuman or degrading treatment in Uzbekistan, in particular for individuals accused of terrorism and of having participated in the Andijan events.

11.8 The Committee recalls that, under the terms of its general comment No. 1 on the implementation of article 3, it will give considerable weight to findings of fact that are made by organs of the State party concerned, but that the Committee is not bound by such findings and has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based on the full set of circumstances in every case.[14] In the present case, the Committee notes that the only body that addressed the issue of whether the complainant's brother faced a risk of torture on return to Uzbekistan was the West Kazakhstan Regional Court in its decision of 7 May 2012. The court plainly rejected the

[11] General comment No. 1, *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44* (A/53/44 and Corr.1), annex IX, paras. 6 and 7.

[12] See communications No. 39/1996, *Paez v. Sweden*, Views adopted on 28 April 1997; No. 110/1998, *Núñez Chipana v. Venezuela*, Views adopted on 10 November 1998, para. 5.6; and No. 297/2006, *Singh Sogi v. Canada*, decision adopted on 16 November 2007.

[13] See communication No. 444/2010, *Abdussamatov et al v. Kazakhstan*, decision adopted on 1 June 2012, para. 13.7.

[14] See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010.

allegations of the complainant's brother, stating that there were no "concrete evidence or grounds" that he would be subjected to torture, without evaluating or even noting the evidence presented regarding the existence of a pattern of gross, flagrant or mass human rights violations in Uzbekistan and the numerous reports that individuals accused of terrorism and participation in the Andijan events have been routinely subjected to torture.

11.9 The Committee notes the complainant's allegations that his brother's former colleagues from the furniture producing enterprise in Uzbekistan had been arrested, subjected to torture during pretrial detention and convicted of terrorism shortly after his brother's departure for the Russian Federation, and observes that the State party does not address those allegations. The Committee also notes the complainant's allegation that in the event of forced return to Uzbekistan, his brother might be subjected to reprisals for applying for refugee status in Kazakhstan and lodging a communication before the Committee, and observes that the State party does not refute that allegation. In the context of the case, the Committee concludes that the complainant's brother, who has been charged with terrorism, interference with the constitutional order of Uzbekistan, illegal establishment of a religious organization, production and dissemination of materials containing a threat to public safety and public order, and establishment of and participation in religious extremist, separatist, fundamentalist or other banned organizations in relation to his alleged participation in the organization of the Andijan events, has sufficiently demonstrated foreseeable, real and personal risk of torture on return to Uzbekistan. Accordingly, the Committee concludes that, in the circumstances of the present case, the State party's extradition of the complainant's brother to Uzbekistan would constitute a violation of article 3 of the Convention.

12. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the extradition of the complainant's brother to Uzbekistan would amount to a breach of article 3 of the Convention.

13. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of the present decision, of the steps it has taken in accordance with the above observations.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]